

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BILLY D. FOWLER,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION, et
al, in its official and individual capacity;
JUSTINE ANDERSON, in her official and
individual capacity; Estate of BRAD CONN,
in his official and individual capacity; and
MARY PARSONS, in her official and
individual capacity,

Defendant.

MARY PARSONS,

Counterclaimant,

v.

BILLY D. FOWLER,

Counterdefendant.

Case No. C07-5589RBL

ORDER

THIS MATTER is before the Court on Defendants U.S. Bank National Association, Justine Anderson and Minda Malson's Motion to Dismiss [Dkt. #9], Defendant Brad Conn's Motion for Summary Judgment [Dkt. #19], and Defendant Mary Parsons' Motion for Summary Judgment [Dkt. #22]. Also pending before the Court are Plaintiff's Motion to Remand [Dkt. #12], Motion to Strike Defendants U.S. Bank, et. al.'s Motion to Dismiss [Dkt. #27] and Motion to Strike Defendant Conn's and Parsons' Motions

1 for Summary Judgment [Dkt. #32]. Having considered the entirety of the records and file herein, the
2 Court rules as follows:

3 Plaintiff initially filed this Complaint in Clark County Superior Court on September 20, 2007. On
4 October 24, 2007 the defendants removed the matter to this Court. The pro se complaint alleges that the
5 defendants violated plaintiff's rights under article 1, section 7 of the Washington Constitution and the
6 Fourth and Fourteenth Amendments to the United States Constitution when Vancouver City Detective
7 Mary Parsons and Clark-Skamania Drug Task Force Financial Investigator Brad Conn authored affidavits
8 which resulted in two orders issued to U.S. Bank for plaintiff's financial records. The orders were issued
9 pursuant to RCW 10.27.14 by the Honorable John Nichols, Clark County Special Inquiry Judge.
10 Defendant U.S. Bank produced the records in response to the first order at some time prior to March 13,
11 2003. The second order was issued May 21, 2003 directing U.S. Bank to produce the requested records
12 by June 27, 2003. The record does not reflect if that order was complied with.

13 On October 7, 2004 plaintiff was charged by way of a Fourth Amended Information with various
14 drug counts and six counts of money laundering. None of the money laundering charges involved his
15 accounts at U.S. Bank. On October 8, 2004 plaintiff was convicted of three charges relating to the
16 possession and distribution of methamphetamine, and one count of money laundering. The jury could not
17 reach verdicts on the remaining money laundering counts.

18 I. LEGAL STANDARDS

19 Dismissal under Fed. R. Civ. P. 12(b)(6) is proper if it appears beyond doubt that plaintiff can
20 prove no set of facts that would entitle him to relief. *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir.
21 1983), citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Dismissal may be based on either the lack of a
22 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
23 *v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as
24 admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d at 1300.
25 However, a plaintiff must plead factual allegations with specificity; vague and conclusory allegations of fact
26 fail to state a claim for relief. *Colburn v. Upper Darby Township*, 838 F.2d 663, 666 (3rd Cir. 1988). If a
27 claim is based on a proper legal theory but fails to allege sufficient facts, the plaintiff should be afforded the
28 opportunity to amend the complaint before dismissal. *Keniston*, 717 F.2d at 1300. If the claim is not

1 based on a proper legal theory, the claim should be dismissed. *Id.* If the Court considers matters outside
 2 of the pleadings, the motion to dismiss will be treated as a motion for summary judgment. Fed. R. Civ. P.
 3 12(b)(6).

4 Summary judgment is appropriate when, viewing the facts in the light most favorable to the
 5 nonmoving party, there is no genuine issue of material fact which would preclude summary judgment as a
 6 matter of law. Once the moving party has satisfied its burden, it is entitled to summary judgment if the
 7 non-moving party fails to present, by affidavits, depositions, answers to interrogatories, or admissions on
 8 file, “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
 9 324 (1986). “The mere existence of a scintilla of evidence in support of the non-moving party’s position is
 10 not sufficient.” *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual
 11 disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a
 12 motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other
 13 words, “summary judgment should be granted where the nonmoving party fails to offer evidence from
 14 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d at 1220.

15 II. DISCUSSION

16 A. Defendant Mary Parsons’ Motion for Summary Judgment.

17 Defendant Mary Parsons seeks summary judgment because (1) the law does not support claims for
 18 money damages under the Washington Constitution, (2) plaintiff alleges state law theories of tort and failed
 19 to file a claim for damages as required under RCW 4.96, and (3) neither the Fourth nor Fourteenth
 20 Amendments to the United States Constitution are violated when an individual’s bank records are
 21 obtained.

22 Washington courts have “consistently rejected invitations to establish a cause of action for damages
 23 based upon constitutional violations ‘without the aid of augmentative legislation.’” *Blinka v. Wash. St.*
 24 *Bar. Ass’n*, 109 Wn. App. 575, 591 (2001), *quoting Sys. Amusement, Inc. v. State*, 7 Wn. App. 516, 517
 25 (1972). “Plaintiffs assert the County violated their right of privacy under article 1, section 7 of the
 26 Washington Constitution and, as such, they should be allowed to bring a civil action for damages against
 27 the County. Plaintiffs concede no such action under the state constitution is currently recognized, but ask
 28 us to use this case to create one We decline [the] request[.]” *Reid v. Pierce County*, 136 Wn.2d

1 195, 213 (1998) (footnotes omitted). Thus, there is no such cause of action for violation of article 1,
2 section 7 of the Washington Constitution recognized under state law. To the extent plaintiff seeks money
3 damages for the search of his U.S. Bank records under the Washington Constitution, his claim must be
4 dismissed.

5 If plaintiff is asserting claims against the City of Vancouver under state law theories of tort, he must
6 abide by the claims filing procedures contained in RCW 4.96. The pre-claim notice requirement contained
7 in RCW 4.96.020 must be strictly followed, and the failure to do so results in dismissal. *Medina v. Pub.*
8 *Util. Dist. No. 2*, 137 Wn.2d 303 (2002); *Pirtle v. Spokane Public School Dist. No. 81*, 83 Wn. App. 304
9 (1996). Plaintiff did not file a claim with Tim Haldeman the City's Risk Manager and person appointed to
10 receive all claims. Therefore, any state law tort which plaintiff purports to assert against the City must be
11 dismissed.

12 Finally, any claims plaintiff purports to assert under the Fourth and Fourteenth Amendment to the
13 United States Constitution must be brought under 42 U.S.C. §1983. One of the elements plaintiff must
14 prove in order to prevail under 42 U.S.C. §1983 is the violation of a constitutional right. The United
15 States Supreme Court has held that an individual has "no expectation of privacy" in their bank records that
16 implicates the Fourth Amendment. *United States v. Miller*, 425 U.S. 435, 442 (1976). Thus, plaintiff has
17 no claim that a judicially ordered subpoena which directed U.S. Bank to produce his records violated any
18 federal constitutional right. This claim must be dismissed.

19 **B. U.S. Bank, et al.'s Motion to Dismiss.**

20 In addition to the reasons previously stated, any claims against U.S. Bank, Justine Anderson, or
21 Minda Malson must also be dismissed because these defendants are not state actors for purposes of the
22 state or federal constitution. *City of Pasco v. Shaw*, 127 Wn. App. 417 (2005); *Apao v. Bank of New*
23 *York*, 324 F.3d 1091, 1093 (9th Cir. 2003).

24 **C. Defendant Conn's Motion for Summary Judgment.**

25 In addition to the reasons previously stated, any claims against defendant Brad Conn must also be
26 dismissed because he passed away over two years prior to the filing of this lawsuit. "A person who dies
27 prior to filing suit is not a legal entity." *Adelsberger v. United States*, 58 Fed. Ct. 616, 618 (2003).
28 Plaintiff did not file a claim against defendant's estate "within twenty-four months after the decedent's date

1 of death,” RCW 11.40.051(1)(c), thus further barring this action. Furthermore, substitution of Conn’s
2 governmental employer under Fed. R. Civ. P. 25 is not proper because this action was commenced after
3 Mr. Conn’s death. *See Chorney v. Callahan*, 135 F. Supp. 35, 36 (D. Mass. 1955).

4 **III. CONCLUSION**

5 Defendants U.S. Bank National Association, Justine Anderson and Minda Malson’s Motion to
6 Dismiss [Dkt. #9] is **GRANTED**. Defendant Brad Conn’s Motion for Summary Judgment [Dkt. #19] is
7 **GRANTED**. Defendant Mary Parsons’ Motion for Summary Judgment [Dkt. #22] is **GRANTED**. The
8 Court declines to exercise supplemental jurisdiction pursuant to 28 U.S.C. §1367(c)(3) over Parsons’
9 counterclaim [Dkt. #5]. The counterclaim for malicious prosecution is **REMANDED** to Clark County
10 Superior Court. Plaintiff’s Motion to Remand [Dkt. #12] insofar as it seeks remand of the entire cause of
11 action is **DENIED**. Plaintiff’s Motions to Strike [Dkt. #’s 27 and 32] are **DENIED**. This case is
12 **DISMISSED** with prejudice [except as to defendant Parsons’ counterclaim].

13 **IT IS SO ORDERED.**

14 Dated this 20th day of December, 2007.

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17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE
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